

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MILTON HERNANDEZ,

Defendant.

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CASE NO. 8:07CR369

**MEMORANDUM
AND ORDER**

This matter is before the Court on the government's appeal (Filing No. 31) from the Magistrate Judge's order (Filing No. 30) denying the government's motion to continue (Filing No. 23). The government filed a supporting brief (Filing No. 32).

Briefly, the Indictment was filed on October 17, 2007. (Filing No. 1.) The government was granted a one-week extension of the discovery deadline. (Filing No. 12.) Trial was scheduled for December 18, 2007. (Filing No. 13.) The Defendant was granted a continuance of the trial date until February 26, 2008. (Filing No. 16.) The reason provided was for further investigation as discovery had been received. (Filing No. 15.) A change of plea hearing was scheduled for March 31, 2008. (Filing No. 17.) The Defendant decided not to plead guilty, and trial was scheduled for May 20, 2008. (Filing No. 18.)

Pursuant to 28 U.S.C. § 636(b)(1)(A) and NECrimR 57.2, the court has reviewed the order from which this appeal has been taken. In an appeal from a magistrate judge's order on a pretrial matter within 28 U.S.C. § 636(b)(1)(A), a district court may set aside any part of the magistrate judge's order shown to be clearly erroneous or contrary to law. 28 U.S.C. § 636(b)(1)(A); NECrimR 57.2(c).

Judge Gossett denied the government's motion for the following reasons: the content of the government's motion; and the "lengthy extensions . . . previously granted." The government argues, among other things, in its appeal that the issues raised in the Defendant's motion in limine (Filing No. 21) have not yet been addressed. As the government responded to the motion, as ordered, on May 13, 2008, the motion in limine is ripe as of today's date, May 14, 2008. (Filing No. 22.) Trial is scheduled for May 20, 2008. (Filing No. 18.)

Both parties appear to have had some role in delaying the discovery of materials in the Spanish language, which is the issue that led to the filing of the Defendant's motion in limine. (Filing No. 23.) According to the Court's records, 26 days are left on the speedy trial clock, and because Filing No. 21 is still pending the clock is stopped. Although the Court does not find Judge Gossett's order clearly erroneous or contrary to law, the Court concludes that due to the nature of the pending issues relating to the Defendant's motion in limine the interest of justice suggests that a continuance is in the best interest of both parties in order to ensure a fair trial.

IT IS ORDERED:

1. The government's appeal from the Magistrate Judge's Order (Filing No. 31) is granted;
2. The Magistrate Judge's previous order (Filing No. 30), is overruled;
3. Trial in this matter is continued to **Tuesday June 24, 2008, at 9:00 a.m.**, with the attorneys meeting in chambers at **8:30 a.m.**;

4. For this defendant, the time between today's date and the trial date is excluded for purposes of computing the limits under the Speedy Trial Act because the ends of justice outweigh the best interest of the public and the Defendant in a speedy trial, for the reasons stated in this order, and because the failure to grant a continuance would result in a miscarriage of justice. 18 U.S.C. §§ 3161(h)(1)(J), (h)(8)(A) & (h)(8)(B)(i).

DATED this 14th day of May, 2008.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge